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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-198093

DATE: November 10, 1980

MATTER OF: Clyde G. Cobb - [Subsistence Expense
Claim]

DIGEST: Transferred employee of Federal Aviation Administration reclaims amount of subsistence expenses disallowed by agency as unreasonable in accordance with the Federal Travel Regulations and its own implementing regulations. Employing agency has initial responsibility to determine reasonableness of expenditures for subsistence while occupying temporary quarters. Where agency has exercised that responsibility, GAO will not substitute its judgment for that of the agency in the absence of evidence that the agency's determination was clearly erroneous, arbitrary, or capricious.

(Air Traffic Control Specialist Clyde G. Cobb, through his authorized representative, Kenneth Huston of the Professional Air Traffic Controllers Organization (PATCO), claims that the Federal Aviation Authority (FAA) is legally obligated to reimburse him for the entire sum which he spent on food for himself and his family while they occupied temporary quarters.) The expenses occurred incident to Mr. Cobb's permanent transfer from Puerto Rico to Edwards Air Force Base, California. This matter is submitted to our Office pursuant to the provisions of 4 C.F.R., Part 21. The FAA was served as required by 4 C.F.R. § 21.5 on March 5, 1980, but it declined to respond to the claimant's request for a decision.

Since the FAA relied upon Department of Labor statistics in determining the reasonableness of Mr. Cobb's expenses, we will not substitute our judgment for that of the agency absent a showing that the agency action was clearly erroneous, arbitrary, or capricious. Mr. Cobb's claim is denied.

(Over the course of the months February and March 1977, the FAA advanced Mr. Cobb a total of \$3,790 for

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his relocation expenses. Mr. Cobb says that after the Deputy Chief of the Edwards Radar Approach Control Facility rejected his claim for temporary quarters subsistence expenses as excessive, he revised his figures and submitted a voucher claiming food expenses of \$3,135.95. The Voucher Examination Branch of the FAA disallowed \$1,631.75 of that sum on the basis that the reasonable expenditure for food for a family of five eating at home and out would be \$218 (plus 15 percent for tips) per 10 day period. The agency based this calculation on figures compiled by the Bureau of Labor Statistics for a higher income family in the Los Angeles - Long Beach, California, area. Figures derived from the May 1976 table were adjusted for inflationary increases of 10 percent between May 1976 and April 1977. Beginning in April 1978, the FAA recouped the difference between the amount advanced to Mr. Cobb and the amount actually authorized him by withholding a portion of his wages in seven successive pay periods.

PATCO says that the FAA acted unreasonably or illegally since it did not adhere to previous Comptroller General decisions, specifically B-189072, August 11, 1978, 57 Comp. Gen. 664 (1968), as amplified by B-189072, November 27, 1979, 59 Comp. Gen. 99 (1979). That decision involved the correct method for handling fraudulent travel expense claims. PATCO contends that:

"Although the instant matter does not involve fraud, the Agency's contention that the claimed amounts are excessive and therefore not allowable, resulted in recoupment just as if there had been a finding of fraud. Moreover, the FAA did not attempt to adjust Mr. Cobb's claimed subsistence expenses on a separate daily basis, but rather confined his expenses to an arbitrarily imposed \$21.80 plus 15% for tips for each day of the 60 day temporary period. In this regard, we believe that the Agency has departed for [from] the clear provisions of DOT Travel Manual, 1500.6 paragraph 633,d.

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Under those provisions, Mr. Cobb was entitled to subsistence expenses up to \$3,488.00 for the 60 day period, however, the Agency allowed only \$2,111.80."

(In addition, PATCO says that the use of the Bureau of Labor Statistics (by FAA) is hypothetical and not germane to Mr. Cobb's actual expenses.)

(An employee is entitled to reimbursement for the actual subsistence expenses which he incurs, provided that these expenses are incident to the occupancy of temporary quarters and are reasonable as to amount. Federal Travel Regulations (FTR) (FPMR 101-7, May 1973), para. 2-5.4a. In addition, the maximum amount which may be reimbursed for temporary quarters shall be the lesser of either the actual amount of allowable expense incurred or a formula based on a percentage of the daily per diem rate for the locality in which temporary quarters are located. FTR para. 2-5.4c; DOT Travel Manual 1500.6, para. 633d.

(It is the responsibility of the employing agency, in the first instance, to determine that such expenses are reasonable in light of the circumstances of each individual case.) Jesse A. Burks, 55 Comp. Gen. 1107, 1110 (1976). (FAA has exercised that responsibility, and we will not substitute our judgment for that of the agency in the absence of evidence that the agency's action was clearly erroneous, arbitrary or capricious.) Burks, supra, and Thomas D. Voglesonger, B-196030, December 11, 1979.

The provisions of FTR para. 2-5.4c, as implemented in para. 633d of DOT Travel Manual 1500.6, are the maximum amounts which may be reimbursed. Thus, the fact that Mr. Cobb claims the maximum amount he was allowed does not automatically entitle him to reimbursement. The claimed expenses must meet a test of reasonableness. See Richard B. Davis, B-197576, September 8, 1980.

Further, the Comptroller General has specifically noted that (a determination of the reasonableness of the

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sum claimed for subsistence expenses may be made on the basis of statistics and other information gathered by Government agencies regarding living costs in the relevant location.) Burks, supra. See also Jack S. Sanders, B-188289, November 14, 1977, and Voglesonger, supra. The Comptroller General has also recognized that Department of Labor statistics are based on the "average" family, and thus the actual expenses of a particular family will vary depending upon the family's composition and actual income. Such variances can be accounted for through the use of the Bureau of Labor Statistics equivalence scale. Jesse A. Burks, 56 Comp. Gen. 604 (1977). However, no evidence has been presented here that would indicate that the Bureau of Labor statistics were not properly adjusted to reflect the particular circumstances of Mr. Cobb's family.

We also reject PATCO's suggestion that recoupment of an employee's wages should be permitted only where the claimant has submitted a fraudulent settlement voucher. FTR para. 2-5.4a explicitly states that reimbursement will be allowed only for reasonable expenditures. The FAA has determined that Mr. Cobb's expenses exceeded the level of reasonableness. Recoupment is justified under such circumstances. Mr. Cobb's claim is accordingly denied.)

Harry R. W. Chase

For the Comptroller General
of the United States